

Establishment of a Representative Office in the People's Republic of China

The People's Republic of China (PRC) offers a variety of options for foreign enterprises wishing to enter its markets. The easiest and most cost-effective method is to set up a representative office.

Legal Basis

The legal basis for the establishment of a representative office are the *Provisional Regulations of the PRC on the Administration of Resident Representative Offices of Foreign Enterprises*, which came into force on 30 October 1980, and the *Regulations on Administration of Registration of Resident Representative Offices of Foreign Enterprises*, which came into force on 1 March 2011.

A number of rules relating to specific enterprises, such as financial institutions and insurance companies, also apply to the representative offices of foreign enterprises.

Establishment of a Representative Office

A representative office now only needs to be registered with the competent Administration for Industry and Commerce at the intended location of the office ("AIC"), except if it is established by a specific foreign enterprise such as a financial institution or insurance company, etc. The AIC will decide on the registration within 15 days and then issue a registration certificate within 5 days after submitting all required documents. The representative office becomes legally established once the registration certificate has been issued. In some locations such as Shanghai, foreign companies are not permitted to submit the application directly: instead, they must engage the services of an authorized PRC company, i.e. a so-called sponsor.

Qualifications of the Foreign Enterprise

As required by PRC law, to establish a representative office, the foreign enterprise must have existed for more than 2 years. Further, the foreign enterprise shall be able to provide a letter of creditworthiness issued by a reputable bank. If a foreign enterprise is a financial institution or insurance company, additional requirements such as business experiences in the relevant fields and no record of major illegal actions must be fulfilled.

Since 1 March 2011, the foreign enterprise can only appoint at the maximum 4 representatives (including the Chief Representative) to its representative office. This limits the numbers of foreigners to work for a representative office.

Business Scope of a Representative Office

Representative offices are not allowed to conduct business directly. A representative office may only engage in indirect business operations, such as conducting market research, presentations and promotional activities in relation to its parent company's products or services, networking with other businesses and organizations in relation to product sale, service provision, domestic procurement and domestic investment.

The establishment of a representative office ensures that the basic conditions for a permanent business presence in the PRC are fulfilled. For example, a representative office can

- rent commercial and residential premises
- obtain work permits and residence permits for expatriate employees of the representative office
- use company logos at the business premises of the representative office
- use business cards referring to the representative office
- open bank accounts in the PRC on behalf of the representative office
- enter into indirect employment relationships with Chinese employees

Representative offices are not permitted to enter into direct employment relationships with Chinese employees. However, they can hire Chinese employees through an officially authorized service company, such as e.g. FESCO.

Taxation Issues

Under the current PRC tax regime, representative offices are subject to PRC corporate income tax at 25% on “profits” and business tax at 5% on “revenue” either based on actual profit method, deemed profit method based on actual revenue or deemed profit method based on actual expenditures. Since most representative offices do not have their own revenue in practice, most representative offices are taxed based on the deemed profits based on actual expenditures. The deemed profit rate is normally 15%.

As an exception, the representative office of a foreign enterprise located in a country, which concluded a double taxation treaty with the PRC, may apply for tax exemption under the relevant double taxation treaty, if the representative office is not regarded as a permanent establishment in China. In practice, such tax exemption is difficult to be obtained.

All the representatives registered for a representative office shall declare their individual income taxes in China through the representative office. In case of occurrence of any individual income tax, the representative office shall withhold and pay the individual income tax to the competent Chinese tax authority.

Management of a Representative Office

Starting from 1 March 2011, the business term of a representative office is no longer limited but subject to the term of the foreign enterprise. However, after the representative office is established, it has to participate in the annual inspection conducted by the AIC every year. Any change of the name, representatives, registration address, business scope of the representative office as well as any change of the legal representative, business form and registered capital of the foreign enterprise shall be registered or filed with the AIC. In case of dissolution, the representative office shall apply for deregistration with the AIC and the relevant deregistration procedures as provided by law shall be followed.

For further information and assistance, please contact

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